IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1570 OF 2006

The United India Insurance
Company Ltd. ...Appellant

Vs.

Indubai P.Ugale & Ors. ...Respondents

Mr.N.G.Ghotekar for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: JULY 25,2006.

P.C.:

1. Heard Advocate for the Appellant. The Appellant is the insurer of the vehicle involved in the accident. The compensation awarded by the Tribunal in favour of the original claimant is in the sum of Rs.30,853/- (inclusive of no fault liability) with interest at the rate of 7.5% p.a. from the date of the application till the realisation of the entire amount.

2. The compensation which is awarded is on account of injuries sustained by the Respondent No.1-original claimant in the accident. The medical certificate at Exh.62 shows that the Respondent No.1 sustained head injury and her disability is assessed at 20%. The Respondent No.1 was admitted in the hospital for about 14 days and according to her, she had incurred expenditure of Rs.18,000/-. The learned Member of the Tribunal has awarded Rs.10,853/- towards medical expenses on the basis of the bills produced on record and Rs.20,000/- on account of the injuries, pain

and sufferings.

3. The learned Counsel for the Appellant submitted that the cover note of the insurance policy was issued for a period between 2nd April 1996 to 1st April 1997. A cheque by which the premium was paid by the insured was dishonoured. He submitted that the policy of insurance was therefore cancelled. He submitted that in the circumstances, the Appellant-Insurance Company was not liable to satisfy the Award.

4. I have considered the submissions. The Tribunal has found that the Appellant-Insurance Company did not produce on record any document to show that intimation was given by the Appellant to the registered owner of the cancellation of the policy. It is also found that the intimation of cancellation of policy was not given to the registering authority of the vehicle. In view of this position, the learned Member of the Tribunal relied upon the decision of the learned Single Judge of this Court in case of the Oriental Insurance Company Ltd Vs. Prakash Chunilal Mirgany 2004(3) TAC 141 (Bombay). The learned Single Judge held in a similar fact situation that the Insurance Company continues to be liable to the third parties, if intimation of cancellation of policy was not given to the registered owner as well as to the registering authority.

5. In the present case, the Insurance Company could not lead any evidence to show that intimation of cancellation of the

policy was served to the insured prior to the accident. In my view, the decision of the Apex Court in case of New India Assurance Company Ltd. vs. Rula and others 2000 (3) S.C.C. page 195 is squarely applicable to the facts of this case. The Apex Court held that the contract of insurance in respect of the motor vehicles has to be construed in the light of sections 146 (1), 147(5) and 149(1) of the Motor Vehicles Act, 1988. The Apex Court has held that the contract of insurance under Chapter XI of the said Act of 1988 contemplates the benefit of the third parties who are not signatories or parties to the contract but the third parties are nevertheless protected by such contract. The Apex Court held that the third party is not concerned and does not come in the picture at all in the matter of payment of premium. The Apex Court held that the subsequent cancellation of insurance policy after the accident on the ground that the cheque by which the premium was paid was dishonoured, will not affect the rights of the third party which had accrued on the issuance of the insurance policy.

6. In view of the aforesaid decision of the Apex Court and the decision of the learned Single Judge in case of Oriental Insurance Company Ltd. (supra) the contention of the Appellant deserves to be rejected.

7. There is no merit in the Appeal. Appeal is dismissed with no order as to costs. If the Appellant is entitled in law to recover the amount of compensation from the insured, the Appellant will be free to file appropriate proceedings in

that behalf notwithstanding the dismissal of the Appeal.

Judge.